United Nations A/AC.254/5/Add.8

General Assembly

Distr.: General
15 June 1999

Original: English

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
Fourth session
Vienna, 28 June-9 July 1999
Item 3 of the provisional agenda*
Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4 *ter*, 5, 6, 9, 10 and 14

Proposals and contributions received from Governments

Addendum

Contents

Page

II. Proposals and contributions received from Governments 2

Italy 2

* A/AC.254/15.

V.99-85022 (E)

II. Proposals and contributions received from Governments

Italy

Article 10: Extradition

1. Following paragraph 6, a provision might be inserted to deal with the extradition of persons sentenced *in absentia*. That provision might be worded as follows:

> "1. The fact that a judgement has been issued in absentia shall not be a ground for refusal if it appears that the case has been tried with the same guarantees as when a defendant is present and if one of the following has occurred:
>
> "(a) The defendant, having knowledge of the trial, has deliberately avoided being arrested; or
>
> "(b) The defendant, having been regularly summoned, has deliberately failed to appear at the trial.
>
> "2. When such conditions are not met, extradition shall in any case be granted if the requesting State gives assurance, deemed satisfactory by the requested State, that the person whose extradition is sought shall be entitled to a new trial protecting his or her rights of defence."

Article 14: Mutual assistance

2. Following paragraph 2, a provision might be inserted permitting spontaneous communication of data. It is suggested that the provision be worded as follows:

> "1. Without prejudice to national law and within the limits of their competence, the judicial authorities of a State Party may, without prior request, tra..smit information relating to criminal matters to a judicial authority in another State where they believe that such information could assist that authority in undertaking or successfully concluding inquiries and criminal procedures or could result in a request formulated by that authority pursuant to this Convention.
>
> "2. The transmission of such information must be without prejudice to inquiries and criminal procedures in the State of the judicial authorities providing the information.
>
> "3. The judicial authorities providing the information may request that the information remain confidential, even temporarily, or may place restrictions on its use."

3. Following paragraph 12, the following provision might be inserted to take into account the needs of the requesting State when enforcing a request for mutual assistance:

> "1. Where mutual assistance is afforded and such formalities and procedures are not contrary to the fundamental principles of law in the requested State, the requested State shall undertake to comply, for purposes of executing letters rogatory, with formalities and procedures expressly indicated by the requesting State. The requested State shall execute the request for assistance as soon as possible and shall take as full account as possible of any deadlines set by the requesting State.

"2. Where the request cannot be executed in full accordance with the requirements set by the requesting State, the authorities of the requested State shall promptly inform the authorities of the requesting State and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting State and the requested State may subsequently agree on further action to be taken concerning the request, where necessary making such action subject to the fulfilment of those conditions."

4. Following paragraph 13, the following paragraphs might be inserted:

"1. Where an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by videoconference if the criminal proceedings for which the hearing was requested provide appropriate guarantees of conformity with its fundamental principles of law and where it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State.

"2. Each application for a hearing by videoconference shall contain, in addition to the details referred to in paragraph 10 of this article, a statement of the reasons why it is not possible or desirable for the witness or expert to attend, the names of the persons who are to conduct the hearing and their status.

"3. The judicial authority of the requested State shall summon the individual concerned to appear in accordance with the terms prescribed by the law of that State.

"4. The following provisions shall apply to hearings by videoconference except as otherwise agreed in individual cases, including also measures for the protection of the individual to be heard:

"(a) The hearing shall be attended by a judicial authority of the requested State, assisted by an interpreter where necessary, who shall also be responsible for ensuring both identification of the individual to be heard and compliance with the fundamental principles of the law of the requested State. If the judicial authority of the requested State judges during the hearing that the fundamental principles of the law of that State are being infringed, it shall immediately take the necessary measures for the continuation of the hearing in accordance with those principles; if that is not possible, the videoconference shall be interrupted;

"(b) The hearing shall be conducted by the judicial authority of the requesting State in accordance with the national law of that State;

"(c) If the individual to be heard is unable to understand, he or she shall be assisted by an interpreter to be provided by the requesting State;

"(d) The individual to be heard may claim the right not to testify provided under the national law of the requested State or the requesting State. Where the individual refuses to testify despite having an obligation to do so or does not testify truthfully, the national law of the requested State is applicable.

"5. Without prejudice to measures agreed for the protection of persons, the judicial authority of the requested State shall, on conclusion of the hearing, draw up minutes indicating the date and place of the hearing, any oaths taken and the fact that the hearing was conducted without any physical or mental pressure on the individual questioned.

"6. All costs related to the holding of the videoconference, including the travelling expenses of the witness or expert in the requested State, shall be refunded by the requesting State to the requested State, which may be provided with the necessary technical equipment by the requesting State if it does not have that equipment.

"7. On the basis of agreements between the central authorities such as those referred to in paragraph 8 of this article, States Parties may, where appropriate, apply the above provisions to hearings by videoconference involving accused persons, in conformity with their national laws and with full respect for human rights."

5. Following paragraph 21, a provision could be inserted regarding joint investigations; such a measure might prove useful in investigations into matters that are the subject of the Convention, but in view of the worldwide framework of the Convention and the lack of homogeneity of the legislations that might be involved, it could be applied only on a regional basis and in accordance with bilateral agreements of a general or case-by-case nature. It is suggested that the provision be worded as follows:

"On a reciprocal basis, States Parties may conclude bilateral or multilateral agreements or understandings whereby, in relation to matters that are the subject of criminal proceedings in one or more States, the judicial authorities concerned may, where necessary together with police authorities and after informing the central authority or authorities referred to in paragraph 8 of this article, act jointly within joint investigation bodies. In the absence of such agreements or understandings, such joint investigations may be undertaken by agreement on a case-by-case basis."